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## SENTENCE

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 384 VB

5 JOHN SIMONLACAJ,

6 Defendant.

7 -----x  
8 September 16, 2016  
9 9:40 a.m.  
White Plains, N.Y.

10 Before:

11 HON. VINCENT L. BRICCETTI,

12 District Judge

## 13 APPEARANCES

14 MARY ANNE F. CARNIVAL  
HELEN CHRISTODOULOU  
15 United States Department of Justice16 CAHILL GORDON & REINDEL  
Attorney for Defendant  
17 ANTRUDH BANSAL  
SAMANTHA LAWSON

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1                   THE COURTROOM DEPUTY: United States v. John  
2 Simonlacaj. Will counsel please note their appearances for the  
3 record.

4                   MS CARNIVAL: Mary Anne Carnival and Helen  
5 Christodoulou, United States Department of Justice, for the  
6 government.

7                   MR. BANSAL: Anirudh Bansal and Samantha Lawson for  
8 Mr. Simonlacaj.

9                   THE COURT: Good morning. Have a seat, everybody.  
10 This matter is on for sentencing today, the defendant having  
11 pleaded guilty to one count OF aiding and assisting in the  
12 preparation of a false federal income tax return in violation  
13 of 26 United States Code 7206(2). I reviewed the following  
14 materials in preparation for sentencing. The presentence  
15 report is dated August 26, 2016 prepared by probation officer  
16 Walter Quinn. I've also reviewed a plea agreement dated June  
17 3, 2016. I've reviewed defense counsel's sentencing memorandum  
18 dated September 2, 2016 as well as the letters and materials  
19 attached thereto. And finally the government's sentencing  
20 memorandum dated September 13, 2016. Has anything else been  
21 submitted that I failed to mention?

22                   MS CARNIVAL: No, your Honor.

23                   MR. BANSAL: No, your Honor.

24                   THE COURT: Okay. Mr. Bansal, you had submitted to me  
25 an unredacted version of your memorandum which I have had filed

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1 under seal so it's not in the public docket. But you do need  
2 to docket on ECF the redacted version. Will do you that?

3 MR. BANSAL: We will do that, your Honor.

4 THE COURT: All right. Thank you. Mr. Bansal, have  
5 you read the presentence report and discussed it with your  
6 client?

7 MR. BANSAL: Yes, your Honor.

8 THE COURT: Mr. Simonlacaj, have you read the  
9 presentence report?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you discussed it with your attorney?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Ms Carnival, have you read the presentence  
14 report?

15 MS CARNIVAL: Yes, your Honor.

16 THE COURT: The presentence report calculates the  
17 sentencing range as follows. The base offense level is 16  
18 under guideline Section 2T1.4(a)(1) and 2T4.1(f). There's a  
19 three-level downward adjustment for acceptance of  
20 responsibility under 3E1.1 such that the final offense LEVEL is  
21 13. Defendant has no criminal history points so his Criminal  
22 History Category is I. And therefore according to the PSR, the  
23 sentencing range is 12 to 18 months imprisonment. Supervised  
24 release range is up to one year. And the fine range, according  
25 to the PSR, is three thousand dollars to \$264,000. And I note

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1 that that is slightly different than what the parties agreed to  
2 in their plea agreement but I think that Probation is right and  
3 the parties are wrong. The parties say that the 2014  
4 guidelines apply which is true. And the default is that at  
5 level 13, the fine range would be three thousand to 30 thousand  
6 dollars. But actually what 5E1.2(c)(4) says is that the  
7 maximum fine table does not apply if the defendant is convicted  
8 under a statute authorizing maximum fines greater than  
9 \$250,000. In such cases the court may impose a fine of up to  
10 the maximum authorized. The statute does authorize fines in  
11 excess of \$250,000 because it's up to twice the gross pecuniary  
12 gain or twice the pecuniary loss which the parties have agreed  
13 is \$132,000. So therefore in my view, and I just want to make  
14 sure everybody agrees with this, the fine range is actually  
15 \$3,000 to \$264,000. Did you follow my analysis? You agreed  
16 that that's not what it was so I want to make sure you  
17 understand.

18 MR. BANSAL: I agree with your Honor's analysis.  
19 Sorry for not catching it.

20 MS CARNIVAL: Double the loss and double the gain.  
21 And that is also consistent in the plea agreement that we had  
22 pointed that out, your Honor. And whether I had miscalculated  
23 in terms of applying the 2014 to get to the 3,000 to 30,000 I  
24 apologize.

25 THE COURT: I probably see this a lot more often than

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1 you do on a regular basis because the fine table changed in  
2 2015 and there's a provision in there that says if the offense  
3 is committed prior to that date, prior to November 1, 2015 the  
4 old fine table applies and it's a different fine table so we  
5 have to make that adjustment a lot.

6 Does the government have any objection to the factual  
7 statements in the presentence report?

8 MS CARNIVAL: No, your Honor. Other than one very  
9 minor clarification on the presentence report which is the  
10 identification --

11 THE COURT: Give me a paragraph number.

12 MS CARNIVAL: Paragraph 8. Paragraph 8 has the  
13 correct identification of individual 1 as being the defendant's  
14 sister. And in the justification portion of the PSR, I believe  
15 that's the last page, your Honor, the second to last page, when  
16 Officer Quinn is providing his justification for the  
17 probationary sentence, and he identifies individual 1 as his  
18 sister-in-law. It's a very minor clarification.

19 THE COURT: I see that. On page 17.

20 MS CARNIVAL: Correct, your Honor.

21 THE COURT: I missed that. No question that we're  
22 talking about his sister not his sister-in-law. Is that right?

23 MS CARNIVAL: Correct, your Honor.

24 THE COURT: Mr. Bansal?

25 MR. BANSAL: Correct, your Honor.

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1                   THE COURT: Understood. Other than that, do you have  
2 any objections to any of the factual statements in the PSR?

3                   MS CARNIVAL: No, your Honor.

4                   THE COURT: Does the defendant have any objection to  
5 any of the factual statements in the PSR?

6                   MR. BANSAL: No, your Honor.

7                   THE COURT: There being no dispute as to the fact the  
8 Court adopts the factual statements in the PSR as the Court's  
9 own findings of fact for purposes of this sentencing. Does the  
10 government have any objections to the guidelines calculation  
11 itself or anything else for that matter that you haven't  
12 already told me about in the PSR?

13                  MS CARNIVAL: No, your Honor.

14                  THE COURT: And the same question for the defendant,  
15 does the defendant have any objections to the guidelines  
16 calculation or anything else in the PSR?

17                  MR. BANSAL: No, your Honor.

18                  THE COURT: Okay. One question I have before -- let  
19 me just state what the guidelines range is and then I have a  
20 question. Based on the parties' agreement as set forth in the  
21 plea agreement as well as my review of the presentence report  
22 and my own evaluation of the guidelines, I adopt the guidelines  
23 calculation in the PSR and conclude that the final offense  
24 level is 13, Criminal History Category I, which yields a  
25 sentencing range of 12 to 18 months imprisonment. There's been

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1 no motion for any guidelines-based departure from the  
2 applicable range. The government does suggest in its memo that  
3 the defendant is seeking a departure. I didn't read your  
4 memorandum that way. I thought you were not seeking a  
5 departure, you were just seeking a below the guidelines  
6 sentence based on the factors of 3553(a). Are you seeking a  
7 departure?

8 MR. BANSAL: No, we're not. We actually dropped a  
9 footnote --

10 THE COURT: Say no more. I didn't understand you to  
11 be asking for a departure. So you're not, that's the bottom  
12 line.

13 MR. BANSAL: Correct, your Honor.

14 THE COURT: The question I have is this. It's not  
15 crystal clear from what was submitted but the question is does  
16 the government agree that the defendant made the payment to the  
17 IRS in connection with the filing of his amended personal tax  
18 return for 2010 as described in the defendant's memorandum.  
19 Talking about the federal payments now which is really all I  
20 care about for purposes of sentencing. I'm told that  
21 Mr. Simonlacaj filed an amended return for himself, that he  
22 paid an additional \$148,850 as tax payments for the 2010 year.  
23 He paid interest of 27,442 and penalties of 36,963 so that he  
24 paid a total of \$212,255. Now in fact has that been paid?

25 MR. BANSAL: Yes, your Honor. In fact, I brought with

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1 me and I'm happy to pass it to the Court after showing it to  
2 the government, the letters from the accountant to the IRS  
3 enclosing checks in the amounts you stated as well as the state  
4 checks even though I recognize that's not relevant. I have  
5 certified mail receipts. I don't know whether the IRS has  
6 cashed those checks.

7 THE COURT: Has government counsel seen that?

8 (Handed to counsel)

9 THE COURT: I want to confirm that the payments have  
10 been made. I don't doubt that they have. I trust you. But I  
11 just want to confirm that on the record.

12 MS CARNIVAL: Your Honor, we are not, as I indicated  
13 in our papers, I'm not contesting and I accept the  
14 representation that the payment has been made. And the reason  
15 that I was asking for deferring the restitution for a period up  
16 to 90 days is that the IRS, although they may have well gotten  
17 the amended return, until it's processed and the calculations  
18 that were done were of course done by the defendant's  
19 accountant, I have learned from experience the IRS does what  
20 the IRS does. So we don't know.

21 THE COURT: Hold on. This is a criminal courtroom.  
22 This is restitution which is a penalty, a punishment. This is  
23 not tax court. I'm not tax court. So my only question for  
24 now, and we'll talk more about this at the appropriate time, my  
25 own question for now is did he pay this money with respect to

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1       2010 for his own personal taxes and you're saying to me he has  
2 paid the money. You're just saying to me that you're not  
3 conceding that his return is accurate, you're not conceding  
4 that that's the correct amount of money that he owed in terms  
5 of additional tax payments, interest and penalties, but he has  
6 paid the money. That part you're willing to confirm. If not  
7 we'll have a hearing. We'll mark it as an exhibit --

8                  MS CARNIVAL: I just don't know if it's been received.

9                  THE COURT: Let me see it. If you can't confirm what  
10 to me seems the most simple black and white fact, then fine,  
11 we'll waste some more time. It's okay. I got plenty of time.

12                 I'm looking at a document that has been submitted to  
13 me which among other things has a copy of a bank check payable  
14 to the United States Treasury for \$212,255 which is the total  
15 of the numbers that I mentioned a moment ago. There's also a  
16 communication from I guess it's from BDO, I assume that's  
17 Mr. Simonlacaj's accountant.

18                 MR. BANSAL: Right, your Honor.

19                 THE COURT: To him giving him instructions about how  
20 to file and pay both his federal and state taxes with respect  
21 to the amended 2010 return. Two separate instruction letters  
22 you might say from BDO. There's also an official check, bank  
23 check also dated September 2, 2016 payable to the Commissioner  
24 of Tax and Finance for \$2,480 which I take it is with respect  
25 to the so-called MTA tax.

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1 MR. BANSAL: Correct, your Honor.

2 THE COURT: And then third there's another instruction  
3 sheet talking about how to file and pay taxes, penalties and  
4 interest with respect to the New York State personal return,  
5 the amended personal return for 2010 and a bank check in the  
6 amount of \$68,482 dated September 2, 2016. There's also, I'm  
7 also reviewing certified mail receipts indicating on September  
8 2, 2016 packages were mailed to the Department of Treasurer,  
9 the New York State processing center and the, I'm not sure if  
10 this says MCPMT processing center. I guess that's with respect  
11 to the so-called MTA tax?

12 MR. BANSAL: Correct, your Honor.

13 THE COURT: And Mr. Bansal has advised me that these  
14 payments have in fact been paid by bank check.

15 MR. BANSAL: Correct, your Honor.

16 THE COURT: So I think I can reasonably conclude,  
17 unless the government is prepared to give me some information  
18 or evidence that would persuade me otherwise, that these  
19 payments have been made. That's not the same as saying that  
20 the returns have been approved and that the IRS thinks they're  
21 right. I'm not saying that at all. I'm just asking if the  
22 amount has been paid. That's the only question I have.

23 MS CARNIVAL: I would agree with that statement.

24 THE COURT: All right. So I'm going to hand these  
25 back to counsel. For purposes of this proceeding, I'm going to

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1 assume that these payments that I've just described have been  
2 made.

3 Okay. Does the government wish to be heard on  
4 sentencing? Keep in mind I have reviewed your memorandum. But  
5 you're welcome to say anything you want.

6 MS CARNIVAL: Thank you, your Honor. Actually, in  
7 light of the foregoing, in terms of the payment, your Honor,  
8 there is actually only one, I just want to discuss that a  
9 little bit with the Court. Which is when I first saw in their  
10 papers that this payment had been made and I said that's all  
11 well and good and I was certainly not contesting or suggesting  
12 that they had not in fact made the payment and were making any  
13 sort of a misrepresentation. But I had to bring myself back  
14 to, wait a minute, which Mr. Bansal had indicated in his papers  
15 that the defendant made these payments and it was not required  
16 by the plea agreement which is entirely true. And the reason  
17 being that the underlying, the offense here, the aiding and  
18 abetting the tax return that was materially false in the first  
19 instance was not Mr. Simonlacaj's 2010 tax return. It --

20 THE COURT: It was his sister. Schedule C, I guess  
21 the company involved here is not a corporation or maybe it's a  
22 S corporation. You didn't say in your papers. Neither side  
23 told me that. Why was it passed along directly to the  
24 individual in the first place?

25 MR. BANSAL: Well --

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1                   THE COURT: In 2010.

2                   MR. BANSAL: Meaning why was the claim on Ms Radoino's  
3 tax return. That's a good question. I wasn't there. I don't  
4 know. What I do know is that the beneficial recipient of that  
5 income was my client, Mr. Simonlacaj. So after consulting with  
6 BDO, highly reputable accounting firm, as well as tax counsel,  
7 I know somebody who is experienced in this area, I concluded  
8 that it would be more correct to have Mr. Simonlacaj claim the  
9 income on his own return. He really wants to just make this  
10 right.

11                  THE COURT: I'm going to hear from you. The point is  
12 that for whatever reason it was reported on the sister's return  
13 but it wasn't her money. It was his money. And so it should  
14 be reported on his return. That's what you're saying.

15                  MR. BANSAL: That is right.

16                  THE COURT: The government agrees that he's the  
17 beneficial recipient of the money, right? That's your whole  
18 theory, right, that he sort of orchestrated this ruse by which  
19 he was able to obtain net of taxes far more than he would have  
20 otherwise obtained if he hadn't grossly exaggerated the  
21 expenses associated with this company in 2010. Isn't that  
22 really it?

23                  MS CARNIVAL: Well, the aiding and abetting, I had  
24 indicated to the Court, going back to the beginning of the  
25 investigation that we had an investigation involving the New

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1 York Power Authority and certain contracts that they had let.

2 In the course of that investigation, one of the contracts that  
3 was awarded by the New York Power Authority was Cortlandt which  
4 was Mr. Simonlacaj's sister's company or d/b/a I guess. But  
5 there was a bid awarded by NYPA to that entity. And that  
6 entity was hers not Mr. Simonlacaj's.

7           In terms of the aiding and abetting, we have  
8 established that he was actually in control of that company, it  
9 was he that actually set the events in motion in terms of  
10 getting -- he hired the accountant that was used in 2010 for  
11 that tax return, he provided through someone who worked with  
12 him the information that the accountant relied upon to file in  
13 the tax return and create the Schedule C. And the expenses on  
14 that Schedule C were inflated.

15           The government was able to, we could prove that a  
16 certain amount of the money had gone to Mr. Simonlacaj as I  
17 indicated in our papers. But absent the defendant's admission  
18 now in his sentencing memorandum that I was the effective  
19 beneficiary, we could not prove that beyond a reasonable doubt  
20 that he actually was getting the Cortlandt income. The  
21 Cortlandt income, the payments from NYPA, went to a bank  
22 account that individual 1 had opened. That bank account --

23           THE COURT: The sister.

24           MS CARNIVAL: The sister. That's correct, your Honor.  
25 Once the monies were received into the Cortlandt bank account,

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1 yes, the money went out to various people in various ways  
2 including the defendant who, there was a company that he was  
3 the sole owner of and there were payments from Cortlandt or  
4 transfers from Cortlandt to that entity as well as at least one  
5 payment that went from Cortlandt to the defendant's own bank  
6 account and to a joint bank account that he had with his  
7 sister. That is the backdrop as to how we got to where we were  
8 in terms of an aiding and abetting.

9                 The government is not contesting that at this point  
10 Mr. Simonlacaj has paid or amended his 2010 tax return and the  
11 basis being that he is the effective beneficiary. I'm not  
12 contesting that. It's just I want to explain to the Court that  
13 we couldn't have proven that at the time.

14                 THE COURT: Let me ask you this. If in fact he was  
15 the beneficiary, let's just assume that for the moment, then if  
16 she, the sister, that is, were to file an amended return for  
17 herself and claim all this extra income, that would be the  
18 unusual materially false tax return but false in a way that  
19 benefits the government but not hurts the government. In other  
20 words, it would be grossly overstating her net income. Because  
21 she didn't get it, it didn't go to her, it went to him.  
22 Wouldn't that be a false return?

23                 MS CARNIVAL: It's for -- no, I -- she still needs --

24                 THE COURT: Assuming, please just assume what I just  
25 said, that he was the beneficial recipient, in other words the

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1 company, the sister, whatever you want to call it, the two of  
2 them combined were strawmen. They were not the real recipient  
3 of the money here. It was a pass-through to Mr. Simonlacaj.  
4 And if that's the case, then wouldn't it be filing a false  
5 return for her to file a return to pick up all this extra  
6 income and wouldn't it -- let me just change the hypothetical  
7 slightly. If in fact he was not the beneficiary of this, then  
8 didn't he just file another false federal tax return by picking  
9 it up on his return? You can overstate your income falsely  
10 just like you can underestimate it. You laugh, but false is  
11 false. I'm just trying to figure out -- you see neither side  
12 did a very good job in my opinion. You submitted voluminous  
13 material about, for example, other cases, some of which are  
14 mine, which to my mind has almost zero relevance here. Maybe  
15 what I've done in the past has some relevance. You spent a lot  
16 of time on that which was a waste of time in my opinion.  
17 There's a tremendous amount of effort put into Mr. Simonlacaj's  
18 personal background, his family situation, etc. That's not  
19 irrelevant, it's obviously relevant, no question about it. But  
20 the statute says considering the nature and circumstances of  
21 the offense and then a bunch of other things. To me that means  
22 the first and most important consideration is, I'm not sure if  
23 it's "is" or "are", the nature and circumstances of the  
24 offense.

25 So what I care about is what happened. That's what I

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1 care about most importantly. I also care about the defendant's  
2 personal background. I also care about restitution. I do care  
3 about those things. Those are secondary. But what really  
4 happens what's necessary and neither side did a very good job  
5 and that may be because of the negotiation of a guilty plea  
6 which I believe I said when you first came in struck me as  
7 somewhat unusual because in my experience the Antitrust  
8 Division doesn't ordinarily conduct a tax investigation. This  
9 case arose as a result of some other investigation that you are  
10 doing. You don't tell me about any of that. You don't explain  
11 any of how Mr. Simonlacaj comes into this other than the fact  
12 that he filed a false return. But the filing of a false  
13 return, it's just sort of the manifestation of what actually  
14 happened.

15           What I want to know is what actually happened here.  
16 Why is he a nominee. Why didn't the money go to his sister.  
17 Does his sister really own this company but is her name on it  
18 because it made it easier to get a contract with this public  
19 authority if the business was owned by a woman or minority. I  
20 don't know. Nobody bothered to tell me about it. And those  
21 are the things I care about. You know even now you're kind of  
22 waffling around with what actually happened here. Was this  
23 company real, this Cortlandt Painting Company and actually  
24 operated, you said it wasn't operating, even Mr. Simonlacaj  
25 said it wasn't operated by his sister, that he controlled it,

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1 and I think you said that too, the government said that too.

2 MS CARNIVAL: Your Honor, if I may, I will try to give  
3 the Court --

4 THE COURT: You say that his sister did small painting  
5 jobs, specifically wall murals, and ran the company out of her  
6 home in the Bronx. And then it says that Mr. Simonlacaj used  
7 his sister's company to obtain a contract. That's very  
8 ambiguous. When you say Mr. Simonlacaj used his sister's  
9 company to obtain a contract, that's a sentence only a lawyer  
10 could write. Because it is imprecise as to who really got the  
11 contract. Is it the company or is it Mr. Simonlacaj? In other  
12 words, who is benefiting from this, who is getting the money.  
13 Contracts mean nothing. What matters is money.

14 MS CARNIVAL: That's correct, your Honor.

15 THE COURT: So who got the money. That's all I'm  
16 asking.

17 MR. BANSAL: Maybe I can --

18 THE COURT: No. I'll pick on you in a moment. This  
19 is Ms Carnival's moment. Because I'm talking about her brief.  
20 It says that they were awarded a facade restoration contract,  
21 providing window repair, etc., the incoming expenses were  
22 recorded on his sister's 2010 individual tax return and then  
23 importantly you say Mr. Simonlacaj exercised control over  
24 Cortlandt, oversaw performance of the work, engaged the  
25 accountant. All of that is narrowly tailored to what the

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1 actual offense was. But I'm still struggling with okay I get  
2 it, he was guilty of committing the crime of aiding and  
3 assisting the filing of a false tax return. I'm still trying  
4 to understand why. Why did he do that? The obvious reason he  
5 would do it to me, maybe I'm wrong, is that this was a way to  
6 funnel money to, it was money for him, his sister presumably  
7 knew that.

8 Which raises another question, why wasn't she charged?  
9 She's the one who signed the return which is, well, it's  
10 materially false. There's a million questions that come to  
11 mind and none of which are answered. Only a few of them are  
12 answered I should say. Let's focus on what happened. You've  
13 given me half, maybe even three-quarters of it. Is there  
14 anything else you want to tell me about that?

15 MS CARNIVAL: Your Honor, the original company, which  
16 is vastly overstating it to call it a company. It was a  
17 d/b/a --

18 THE COURT: It's not vastly overstated. There are  
19 millions of small businesses in this country that are d/b/a.  
20 My father ran a business that was a d/b/a until he was 80 years  
21 old. Put everybody through college and grad school. So don't  
22 minimize the significance of that. A d/b/a is a real business.

23 MS CARNIVAL: That was out of deference to  
24 conversations that I had with defense counsel in terms of  
25 characterizing it as a company. This d/b/a in 2005 she set up

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1 Cortlandt Painting Company, d/b/a. The purpose of that company  
2 is that she was, she considered herself an artistic person in  
3 that prior to 2005 she had been doing some small painting jobs,  
4 painting murals for family members. At some point she decided  
5 that I want to pursue this business and decided that she needed  
6 a d/b/a for whatever reason. I don't know. But decided to  
7 have a d/b/a, Cortlandt Painting Company. 2010 there is an  
8 opportunity, there is a contract that is let by the New York  
9 Power Authority including a contract for what they call  
10 building facade work which was window washing and essentially  
11 recaulking windows. The evidence --

12 THE COURT: For \$550,000.

13 MS CARNIVAL: Yes, your Honor. The project was let in  
14 two phases and each would be was approximately \$225,000. But  
15 it was Mr. Simonlacaj that -- individual one didn't know from  
16 contracts or the New York Power Authority. It was he that got  
17 the contract or at least got the company to submit a bid in  
18 that name to the New York Power Authority. In fact, and I had  
19 indicated this in the papers, the contract was submitted in the  
20 name of Cortlandt Painting Company, d/b/a Cortlandt Painting  
21 and Restoration. The reason being that I'm sure that this was  
22 a facade restoration contract, that was the nomenclature that  
23 the New York Power Authority gave it. I assume they thought it  
24 would read better to add restoration. I don't know that. That  
25 is conjecture on my part in terms of that. In any event it was

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1 the defendant that got that bid submitted and we're not talking  
2 about what role if any he had in the award of it. That's  
3 separate and apart from this. But in terms of the causality of  
4 his involvement he certainly got the Cortlandt bid submitted to  
5 the Power Authority. And his sister was not running that  
6 company. She turned it over for whatever reason that she  
7 didn't want to be involved that in fact she had wanted to close  
8 the company. And we understand that they had some discussions  
9 and he indicated that he had some need for the company, don't  
10 close it. She agreed and basically all the evidence is that he  
11 was running the company.

12           Then in terms of, and what I had indicated earlier,  
13 yes, it was, the monies did go into a Cortlandt bank account  
14 and the evidence is that it was his sister who had established  
15 that bank account back in 2005 so it actually was a Cortlandt  
16 bank account and an account opened by the sister not by the  
17 defendant. In terms -- so, Cortlandt got the money because it  
18 went into that account.

19           Mr. Simonlacaj, the reason that we're all here and  
20 what this charge was, is that the evidence was that the false  
21 tax return, it was the Cortlandt, we'll call it the Cortlandt  
22 tax return, that was the return that contained the material  
23 misstatements. His involvement in terms of getting that  
24 materially false tax return filed was as we set forth in our  
25 papers. He provided the information essentially to the

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1 accountant. He secured the services of that accountant. And  
2 it was the defendant who inflated the expenses. As I said, for  
3 the first time there is an admission now in their papers that  
4 he was the effective beneficiary. We certainly --

5 THE COURT: It's kind of logical, right. Why would  
6 someone go to all that trouble to file materially false tax  
7 return, and big numbers, 403 thousand dollars with inflated  
8 expenses which obviously creates a tax benefit to somebody.  
9 Why would you do that unless you were the somebody who was  
10 being benefited? Otherwise there would be no other reason to  
11 do it, or at least that you were one of the somebodies being  
12 benefited. Otherwise, why do it? That would be the typical  
13 motivation. Why would people cheat on their taxes? Because it  
14 puts more money in their pocket and takes money out of  
15 everybody else's pocket. The taxpayers. That's why you do it.  
16 You don't do it just for fun or by mistake. If you're acting  
17 willfully which has been admitted. Why would you do it  
18 otherwise?

19 MS CARNIVAL: I absolutely agree, your Honor. I think  
20 the Court is a hundred percent correct and that was certainly,  
21 when we looked at what was going on here, that it had to be,  
22 logic dictates that he did this not out of the goodness and  
23 kindness of his heart but enlightened self-interest. The money  
24 is going to go to him. All we could do is we did our  
25 investigation. We obviously combed through the bank records.

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1 There was a very Byzantine structure in place.

2 THE COURT: The whole thing is Byzantine. How to get  
3 the money is Byzantine and what you're saying is where the  
4 money went is Byzantine too. In other words, confused.

5 MS CARNIVAL: There were check cashers involved.  
6 There were other companies. And tracing the money, of how much  
7 of this money, if we could have traced that all, of the  
8 Cortlandt income went to the defendant, the charge would have  
9 been something else. All we could do is we analyzed the  
10 evidence and what we developed is that as I said we could only  
11 proof beyond a reasonable doubt a portion of the money going to  
12 Mr. Simonlacaj. Yes, in light of of his admission that I was  
13 the effective beneficiary, but that was certainly not a piece  
14 of evidence that the government had and --

15 THE COURT: I don't want you to confuse my question  
16 with -- and I made a lame joke before when I said I was picking  
17 on you. I'm not picking on you. I'm the last one to know this  
18 stuff. You know it, he knows it, meaning you, Mr. Bansal, the  
19 various associates, the defendant himself. I don't know what  
20 the facts are. I haven't been a lawyer on this case. One of  
21 the hardest things in being a judge is balancing this awesome  
22 responsibility, figuring out what's the appropriate punishment  
23 without knowing all the facts, at least all the relevant facts.  
24 And it's hard sometime. It seems crazy that I should be  
25 required to make these important decisions about somebody's

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1 life which affects that somebody and his family without knowing  
2 all the relevant facts. So I'm asking these questions because  
3 it's essential to my doing my job. That's why I'm asking.

4 If you're telling me, you're almost a little  
5 defensive, the government couldn't prove this beyond a  
6 reasonable doubt, don't be defensive, just tell me what you  
7 know. What you know is, without a doubt he was the one who  
8 used an entity to obtain a contract, the value of which was  
9 \$550,000. The money was paid to the company. It went into the  
10 company's account. In ways that are not entirely clear the  
11 money went out of that account. Some of it went directly to  
12 him. Some of it went to a company under his control. But you  
13 cannot tell me now, we're talking about events that occurred  
14 years ago, you cannot tell me now exactly where all the money  
15 went. But you can tell me for sure, in fact he's pleaded  
16 guilty, that the return was false, (a), and (b), he's the one  
17 who caused it to be false because he's the one who provided the  
18 phony information, the overstated information. Is that a  
19 summary of kind of where you are on this?

20 MS CARNIVAL: That is essentially correct, your Honor.  
21 But if I may, because of, and this is because I really do want  
22 to give the IRS full credit here, we can, the IRS can trace  
23 probably to the penny where the money went. It's just that  
24 those names and those companies are not, they're not the  
25 defendant.

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1                   THE COURT: Or not obviously the defendant.

2                   MS CARNIVAL: I'm sorry, your Honor.

3                   THE COURT: You can trace where the money went. So if  
4 the money went to John Simonlacaj, it's pretty obvious where  
5 the money went. If it went to a company that you can show he  
6 controls, and that's pretty clear where the money went. If it  
7 went to some other entities or names, at some point prosecutors  
8 always follow the money. But at some point, you know, you're  
9 unable to determine ultimately who these people are and whether  
10 they sent money back to Mr. Simonlacaj or how much. There's a  
11 limit to what you've been able to do on that sort of far end of  
12 things.

13                  MS CARNIVAL: Well, I mean these people aren't just  
14 random people and we do know and they do have certain  
15 connections with the defendant. But in terms of proving, if  
16 there's a check going from Cortlandt to John Doe, and I know  
17 that John Doe is a friend of the defendant but John Doe cashes  
18 that check at a check casher, the trail ends at that point.

19                  THE COURT: Right. I think you're agreeing with what  
20 I just said.

21                  MS CARNIVAL: Absolutely, your Honor.

22                  THE COURT: Look. Based on my experience as a judge  
23 but probably more importantly based on my experience as a  
24 prosecutor and criminal defense lawyer I know, well I know a  
25 little something about how prosecutors decide what case to

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1 bring and how the lawyers on both sides negotiate resolutions.  
2 I know a little bit about that from my own personal experience.  
3 And this struck me as highly unusual in one obvious respect  
4 which just gives rise to all these other questions which is,  
5 this was the sister's tax return. Who signed the tax return?

6 MS CARNIVAL: It was electronically filed.

7 THE COURT: Electronically filed with an authorization  
8 from the taxpayer, right?

9 MS CARNIVAL: Correct, your Honor.

10 THE COURT: In other words, the taxpayer, I pay my  
11 taxes, when I do that electronically I am swearing under oath  
12 that my tax return is accurate. That's what I'm doing. Even  
13 without physically signing it. Obviously I'm doing that.  
14 Otherwise we would be, we would do away with this notion that  
15 people have to accurately report their own taxes.

16 MS CARNIVAL: The evidence is, your Honor, that the  
17 2010 tax return, individual 120 tax return, she turned the  
18 entire process over to her brother. She did not file her own  
19 2010 tax return.

20 THE COURT: Her brother might have done it but she  
21 filed it. She's responsible for her own tax return. It's got  
22 her Social Security on it. Is that her Social Security number  
23 or his Social Security number?

24 MS CARNIVAL: It's not his Social Security number.

25 THE COURT: It's a 1040. It's her return, a personal

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1 income tax return. Therefore she filed it, okay. So here's my  
2 question. I'm not really, I don't know that there's an answer  
3 to this, the question that arose naturally to me was, wait a  
4 minute, she filed a return which was materially false and yet  
5 the only person being prosecuted in connection with that is  
6 Mr. Simonlacaj. There's at least three people involved.  
7 There's the sister, there's Mr. Simonlacaj and there's the  
8 accountant. You didn't prosecute the accountant, is that  
9 right?

10 MS CARNIVAL: Correct, your Honor.

11 THE COURT: The accountant always says I just relied  
12 on what I was told. I know that prosecutors are sometimes  
13 skeptical or suspicious of that. You didn't prosecute the  
14 sister, is that correct?

15 MS CARNIVAL: Correct, your Honor.

16 THE COURT: So the only one prosecuted in connection  
17 with this transaction is Mr. Simonlacaj. Correct?

18 MS CARNIVAL: Yes, your Honor.

19 THE COURT: That's what I gleaned from what you  
20 submitted.

21 MS CARNIVAL: Yes, your Honor, that's correct.

22 THE COURT: And what was in the PSR. So I naturally  
23 ask myself the question why. I can come up with an obvious  
24 answer to the why question with respect to the accountant.  
25 I.e. hear no evil, see no evil, etc. I'm just relying on what

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I'm being told by my client or customer, whatever the case may be. But it's not so obvious as to why the sister wasn't prosecuted. It was her return. What do I draw from this? Nothing you've said suggests that my inference is wrong, especially when you combine my inference with what you describe as the defendant's recent explicit acknowledgment that he was a beneficiary of this transaction. What I draw from this is that the reason he did all of this, the reason he orchestrated this contract, the money going to the sister's company, the money going out of the sister's company's accounts to wherever it went, the filing of a false tax return, the reason he did all that is because he's the one who benefits from it. That's the nature of human beings. That's what people do. We all know that's human nature. We do things probably in the simplest most basic element of human nature, self-interest. That's why we've risen to the top of the food chain. We're really good at self-interest.

Anyway, nothing you've said to me suggests otherwise. All you're telling me is that you can't put a penny in his pocket. Put some of it in his pocket. You know that he orchestrated it but you can't put all the money in his pocket. Is that a fair statement?

MS CARNIVAL: That is correct, your Honor. That's the reason why the charge is aiding and abetting.

THE COURT: Don't be defensive about it. I just want

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1 to know what actually happened. Years ago when I was a young  
2 prosecutor we used to use tax charges to prosecute organized  
3 crime figures. Obviously that wasn't really what it was about.  
4 They were storing money and running gambling and running drugs  
5 and killing people. But sometimes the case you could prosecute  
6 would be a tax charge. And that was the favored charge of  
7 prosecutors. It really didn't tell you the whole story. That  
8 wasn't really what the investigation was about. It was about  
9 organized crime. See what I'm saying. I'm not saying that  
10 Mr. Simonlacaj is a member of organized crime. I'm not saying  
11 that at all. But what I am saying is when I see a 7206(2)  
12 charge I know that's kind of the top and there's a lot of stuff  
13 underneath that's not clear. And I'm trying to find out what  
14 that is. Because I'm the one that has to decide what sentence  
15 to impose. That's all. I'm not a prosecutor here. I'm not a  
16 defense lawyer. I'm only trying to do my job, period.

17 Have a seat.

18 Mr. Bansal, do you want to be heard about this? You  
19 do say in your brief, your submission, just one second, let me  
20 just find exactly what you said. I wish you didn't wait until  
21 page 12 to start talking about the offense conduct. The next  
22 time you have a case in front of me I prefer that you spend  
23 time on the offense conduct on page 1. It is the most  
24 important factor. I understand as a defense lawyer it's the  
25 factor that is hardest to work with because you wouldn't be

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1 here unless your client was guilty of a crime. You do talk  
2 about it though. You say starting on page 12, defense conduct  
3 is accurately stated in the PSR. The problem is it's just the  
4 tip of the iceberg that I'm trying to get at. It may be  
5 accurate but it's not complete. At least that's my view of it.

6 Here it is, here's the key sentence on page 13. In  
7 the amended return, meaning Mr. Simonlacaj's amended return for  
8 2010, because Mr. Simonlacaj was the beneficiary of Cortlandt's  
9 2010 income from the New York Power Authority project, he  
10 claimed this income. Maybe there's nothing more that you have  
11 to add. That's a pretty direct statement. He got the money,  
12 therefore he's going to file a return saying I got the money.  
13 I need to pay it back. It's my obligation. It's my money, my  
14 income, my tax obligation. That's what you're saying.

15 MR. BANSAL: It is, Judge. It's a little curious that  
16 Mr. Carnival is saying that this brief is the first --

17 THE COURT: Don't even go there. I don't really care  
18 whether it's the first or the last or 15th. I just want to  
19 know what happened. Please, I don't really care about your  
20 discussions. Not to say that that's not important at some  
21 level but it's not important to me. I just want to know what  
22 happened.

23 MR. BANSAL: Sure, Judge, and I only mention that  
24 because I don't want you to think that we're in any sense  
25 hiding this ball from anyone.

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1                   THE COURT: I don't think of it this way. This is a  
2 difficult business, specifically when it's hard to know exactly  
3 what happened. You try to do the best you can with what you  
4 got and I have no doubt that both sides, both you and  
5 Ms Carnival have done exactly that. Even though nobody -- I'm  
6 always amazed when people say that trials are a search for the  
7 truth. I don't mean to be cynical here. I'm not a cynical  
8 person. They're obviously not a search for the truth. They're  
9 a search for evidence, evidence sufficient to prove, to carry  
10 the party that has the burden of proof -- burden of proof.  
11 That was butchered. It's a search for evidence sufficient to  
12 prove whatever it is that the party who has the burden of proof  
13 is seeking to prove. That's what this is about.

14                  And it's often, in fact I would almost, I wouldn't say  
15 always but it's often difficult to know really what the  
16 complete truth is. I don't know if you're a religious person  
17 but you might say that God is the only one who knows that. But  
18 here on Earth we're limited. This is a classic example of  
19 that. I don't know if anyone knows exactly what happened here.  
20 Go ahead.

21                  MR. BANSAL: I don't know how much iceberg there is  
22 here. Clearly the Antitrust Division did not come into this  
23 looking for tax evidence.

24                  THE COURT: What were they looking for?

25                  MR. BANSAL: They were looking for an offense

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1 involving the rigging of an NYPA contract which as they said in  
2 their many press releases on this matter --

3 THE COURT: I haven't read any press releases.

4 MR. BANSAL: I don't think you should have. That's  
5 something that the government has acknowledged explicitly and  
6 publicly. And that is how, because Mr. Simonlacaj was a  
7 successful bidder who completed to the satisfaction of NYPA the  
8 contract to paint their White Plains facility, that is how he  
9 got roped into this thing. After many discussions with the  
10 government we informed them and were able to I think persuade  
11 them that that contract was fairly obtained and that there was  
12 no bid-rigging investigation to be had.

13 THE COURT: And there was no DBE fraud, you know what  
14 I mean by that. And WDBE local minority or women owned or  
15 disabled own business business enterprises. There was no such  
16 thing in this case.

17 MR. BANSAL: Mr. Simonlacaj did not apply for this  
18 contract as a minority or woman-owned business. Whether there  
19 was a box to that effect, I have a vague recollection there may  
20 have been but it wasn't checked. I'm going to be corrected I'm  
21 sure if I'm wrong about that. That is not the reason that  
22 Cortlandt was in this. And I think it's probably also more  
23 than I know to say that the way that the funds were disposed of  
24 was Byzantine or somewhat designed -- clearly the whole thing  
25 was designed not to look porous and to conceal the income.

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1                   THE COURT: To whose benefit?

2                   MR. BANSAL: To Mr. Simonlacaj's benefit. I've been  
3 up front with the government on that from day one.

4                   THE COURT: By the way, if he had been up front about  
5 it he could have started his own company and called it New  
6 Cortlandt Painting d/b/a or something and then submit the bid  
7 and get the contract and put it in his own account and then pay  
8 taxes correctly and so forth.

9                   MR. BANSAL: Let's talk about that. No one here,  
10 Mr. Simonlacaj least of all, is disputing that this was handled  
11 properly or that he wasn't attempting to evade his taxes. He's  
12 accepted that.

13                  THE COURT: He hasn't accepted that he was attempting  
14 to evade taxes. Don't admit to a crime that he hasn't plead  
15 guilty to. He pled guilty to aiding and abetting.

16                  MR. BANSAL: The result of which was to reduce his  
17 taxes incorrectly. The purpose of the Cortlandt Painting  
18 Company in this entire contract and the bidding process, it  
19 wasn't set up for this purpose. Ms Carnival has pointed out  
20 that it was set up for a legitimate purpose by Mr. Simonlacaj's  
21 sister who was involved in mural painting, had no interest in  
22 this area. It turned out that she didn't do that. And when  
23 the contract came to Mr. Simonlacaj's attention, he decided to  
24 submit the bid using this d/b/a, this company, if that's what  
25 you can call it.

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1                   THE COURT: Which was an existing company controlled  
2 by his sister, someone presumably who would be willing to  
3 follow his lead on this.

4                   MR. BANSAL: I don't know how much involvement she  
5 really had on this.

6                   THE COURT: Probably none. Whatever you want, John.  
7 Fine with me. That's all.

8                   MR. BANSAL: I think that's kind of what it was.

9                   THE COURT: It's pretty stupid but it doesn't mean  
10 it's criminal.

11                  MR. BANSAL: I don't know if she has a level of  
12 sophistication to understand what was even going on here.

13                  THE COURT: Come on. Really? We're not going there.  
14 It's fine. Keep going. I don't mean to interrupt.

15                  MR. BANSAL: I'm not her lawyer. But the reason that  
16 it was used, the company was used in this case, it was a  
17 painting contract. Mr. Simonlacaj runs a company called Center  
18 Line Construction. He probably could have submitted the bid  
19 under Center Line Construction. He decided, because Cortlandt  
20 had painting in the title, and I vaguely remember that there  
21 may have been some other restoration work or painting work that  
22 he had done using Cortlandt, that this would have maybe more  
23 credibility, I suppose. I'm hypothesizing here. That is all.  
24 It was not a vehicle to hide the fact that it was his because  
25 it was always on her Schedule C. He didn't put it there for

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1 that purpose. If he had put it on his return, in the way that  
2 the -- what I'm saying is that that was not a part of the tax  
3 scheme. I'm not sure the government is alleging otherwise.  
4 That's just where Cortlandt's income had always been through  
5 the arrangement between Mr. Simonlacaj's sister and the  
6 accountant.

7 As far as the rest of the disposition of the income,  
8 it's five, six years ago now. I sat with the government's IRS  
9 agent who did a terrific job of outlining for me where he  
10 understood the income went and I never disputed that and I told  
11 him he's done a terrific job. I don't think that anyone is  
12 suggesting that anyone other than Mr. Simonlacaj was the  
13 beneficiary of the income. And the way it gets disposed of is  
14 the way that people dispose of their income.

15 THE COURT: Spend it on stuff.

16 MR. BANSAL: Right, Judge. There were expenses for  
17 the job. There were people to be paid. And there were  
18 expenses, equipment to be purchased I suppose so there are some  
19 of those expenses and the agent was very fair in making clear  
20 that they were counting those expenses as legitimate. So I  
21 don't know how --

22 THE COURT: I just curious -- now we're spending more  
23 time than we have to -- if it was overstated by 400,000 and the  
24 total contract was 550, stop right there, that would suggest a  
25 difference or a profit of 150 but there must have been

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1 legitimate expenses so the 403 was above what was claimed as  
2 legitimate.

3 MR. BANSAL: The 403 is what was overstated.

4 MS CARNIVAL: Correct, the chart that we set out with  
5 the 400,000 approximately, those are the inflated.

6 THE COURT: What were the real expenses? I'm just  
7 curious. Approximately. I don't need to know it precisely.  
8 Somebody has to be paid to go up on the scaffold and do the  
9 work, right? They're not going to do it for free. And you got  
10 to buy the equipment and buy the supplies and so forth. I'm  
11 just curious. What did it cost?

12 MS CARNIVAL: I know the actual expenses, your Honor.

13 THE COURT: Just give me a rough number.

14 MS CARNIVAL: I don't want to mislead the Court.

15 THE COURT: It doesn't matter --

16 MR. BANSAL: You asked the wrong people.

17 THE COURT: You're saying that the inflated part was  
18 403,000.

19 MR. BANSAL: That seems right. The government is much  
20 more familiar with this than I am.

21 THE COURT: That's what your client pleaded guilty to.  
22 I interrupted. This is important to me. It kind of was  
23 spurred by this whole restitution issue which led me to think  
24 well, who should be paying the restitution. Should it be the  
25 sister? After all it's her tax return. And then I'm thinking,

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1 not the restitution, who should be filing the return, shouldn't  
2 it be the sister, it's her return that was false. And then I  
3 thought well, but wait a minute if in fact she was not the  
4 beneficiary of this then if she would have filed a return  
5 claiming it then that would be a false return. Right? And  
6 that would have to be a false return. If she was not the  
7 beneficial recipient. So that wasn't making any sense for her  
8 to do that.

9           Then I thought well, why would Mr. Simonlacaj do it.  
10 Because he is the beneficial recipient. That makes sense. And  
11 then at the end of the day who gets the actual cash. The IRS.  
12 Meaning the taxman. Not real cash. You know what I mean. The  
13 payment itself. Who gets it. It goes to the IRS. And it's  
14 traced correctly back to this false tax return that was filed  
15 on 2010. That was my thinking but I wanted more information  
16 about it.

17           You may not have finished what you were going to say.  
18 I'm going to give Mr. Bansal an opportunity. If there's  
19 anything else you would like to say in connection with  
20 sentencing this would be the time for it.

21           MS CARNIVAL: Your Honor, I don't want to spend, I  
22 don't want to shed more heat than light but I just wanted to  
23 come back to something that you just said to Mr. Bansal in  
24 terms of don't plead to a crime that you haven't been charged  
25 with. I'm looking at the allocution, and your Honor, if I may,

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1 can I read what the defendant allocuted to?

2 THE COURT: I suppose. There's no issue about the  
3 fact that he admitted guilt here. Go ahead.

4 MS CARNIVAL: Well, your Honor, it's very short. Your  
5 Honor -- Mr. Bansal, would you like the page?

6 MR. BANSAL: I'm trusting you'll read it accurately.

7 MS CARNIVAL: "Your Honor, in 2010 I was running  
8 Cortlandt Painting Company, a painting company of which my  
9 sister was legal sole proprietor. Prior to April 2011, I  
10 provided an accountant with information about Cortlandt's  
11 revenue and expenses which I knew would be used in preparation  
12 of my sister's individual tax return form 1040 including a  
13 Schedule C which was filed on or about April 14, 2011. I knew  
14 that a number of the business expenses I provided to the  
15 accountant were materially inflated which would lower  
16 Cortlandt's taxable income. I knew what I was doing was wrong  
17 and I'm very sorry for it."

18 THE COURT: That's a sufficient factual predicate for  
19 a guilty plea. But it's incomplete. That's all.

20 MS CARNIVAL: No, your Honor, that was just in terms  
21 of, as I said, it is a very recent development that we have the  
22 statement that he was the beneficiary.

23 THE COURT: I just told Mr. Bansal I really don't care  
24 about that. Look, to me, the inescapable conclusion from this  
25 including the statement I was running Cortlandt Painting, etc.,

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etc., the inescapable conclusion from all of this is that Mr. Simonlacaj was in fact the recipient of the proceeds of this contract. He was. Not only the beneficiary. But he was also the beneficiary of the tax loss, if you will, the effect of his false statements or the effect of the information he provided that created false tax returns with respect to money of which he was the beneficiary was simply to reduce his taxes. That's the effect of it. Because if he had done it correctly he would have reported the money on his own tax return and would have paid a lot more in taxes and the number that we all agreed on is 132,000. Simple as that.

Anyway, anything else?

MS CARNIVAL: No, your Honor.

THE COURT: Okay.

Mr. Bansal, do you wish to be heard further on sentencing? You're welcome to say anything you want although I have read your brief. That should be fairly obvious.

MR. BANSAL: I'm going to keep this brief and I'm going to try to respond to some of the things that I saw in the government's sentencing submission. Judge, I think that the government's application for a guideline sentence boils down to, in so many words, there's nothing extraordinary about Mr. Simonlacaj. And I dispute that. It is not the correct standard because I think the Court has recognized that the government has used a lot of preBooker downward departure

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1 standards and that's not the standard and it's not what we're  
2 asking for. What we're asking for is that the Court impose a  
3 sentence that is no greater than necessary to achieve the  
4 objectives of sentencing. And that's the standard that the  
5 Probation Department used when they reached the conclusion that  
6 a sentence of probation meets that standard. That in itself is  
7 out of the ordinary, that the Probation Department says that in  
8 my experience on both sides of this.

9 THE COURT: There's more and more in the last few  
10 years. It took them about ten years to get the point of *Booker*  
11 but they finally got around to saying oh, wait a minute, the  
12 court, we are the court, we work for the court, doesn't have to  
13 impose a sentence in the guidelines. So saying it's out of the  
14 ordinary, it's more ordinary now than you would think. If you  
15 were like me seeing these every single day it's pretty  
16 ordinary. I would say that at least in this courthouse it's no  
17 longer ordinary for the Probation Department to recommend a  
18 sentence within the guidelines believe it or not. That's  
19 neither here nor there. They did recommend what they  
20 recommended. No question about it.

21 MR. BANSAL: One of the things that they recognized,  
22 Judge, is that there are extraordinary things about this  
23 defendant. It is decidedly out of the ordinary for someone to  
24 go so far out of their way to so profoundly improve the lives  
25 of dozens and dozens of people seeking absolutely nothing in

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1 return. Time and again when Mr. Simonlacaj was approached by  
2 someone in need he helped in ways that really changed their  
3 lives, Judge. The gallery is full on the right side with  
4 people that have come here from as far as Michigan to be here  
5 to support Mr. Simonlacaj because that's who he is. Letter  
6 after letter provided to your Honor provides firsthand  
7 testimonials in which Mr. Simonlacaj, in the words of one of  
8 them, gave them access to the American dream. That does seem  
9 pretty extraordinary to me among people, even people that the  
10 Court sentences.

11                   What's the government's response to this? They say  
12 that it's "hardly overwhelming." That's a quote. Hardly  
13 overwhelming from their brief. And they say it's hardly  
14 overwhelming because it's not overwhelming when compared to the  
15 hundred million dollars that Ty Warner paid to charity. I'm  
16 not sure that that's where they're setting the bar. But it  
17 misses the point. I'm not just saying that it misses the point  
18 by dismissing a lifetime of charity and generosity because  
19 Mr. Simonlacaj is not a billionaire. It misses the point  
20 because as Judge Patterson recognized, as Judge Scheindlin  
21 recognized, as Judge Seibel recognized last week in sentencing  
22 Steven Sheridan for an offense that was more serious because  
23 there was payroll fraud involved, and the loss was higher, the  
24 aggregate loss was higher. His guidelines were higher, his  
25 range was 15 to 20 months. But Judge Seibel recognized in

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1 sentencing him to probation that giving of yourself is much  
2 more important, says much more about your character.

3 THE COURT: Let me stop you. That was not reflected  
4 in the presentence report. The presentence report will tell  
5 you about related cases, and sometimes the sentencing in  
6 related cases, but that's all, not the guideline range or loss.  
7 That's all. In your brief you do mention this other case. And  
8 it was another thing that I sort of shook my head at when I  
9 read it because I'm thinking you said regarding Steven  
10 Sheridan. I never heard of Steven Sheridan. I know nothing  
11 about the case. I haven't talked to Judge Seibel about the  
12 case. He pleaded guilty to a two-count information charging  
13 him with violating 18 United States Code 1349 for conspiring to  
14 defraud NYPA and 26 U.S. Code 7206(1) for subscribing to a  
15 false return which is a little bit different than aiding and  
16 assisting the filing of a false return.

17 But you didn't tell me anything about the lawsuit  
18 involved or the guideline range or whether he has a criminal  
19 history or not or anything. Why not? Why wouldn't you do  
20 that? Were you afraid that if you told me his guideline range  
21 was higher and then the fact that Judge Seibel did not impose a  
22 jail sentence that that would benefit the defendant? All I'm  
23 asking you, do you confirm what Mr. Bansal said that the  
24 guideline range, of course it's an advisory guideline range,  
25 was 15 to 21 months?

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1 MS CARNIVAL: Your Honor, it is correct --

2 THE COURT: Yes or no.

3 MS CARNIVAL: Yes.

4 THE COURT: Okay. And what in a nutshell, Mr. Bansal,  
5 and make sure you tell me exactly, did Mr. Sheridan do?

6 MR. BANSAL: I have the sentencing transcript and a  
7 lot less ability than Ms Carnival who was actually there. It  
8 seems like he committed payroll fraud which is saying you're  
9 paying a prevailing raid and not paying it in a cost plus  
10 contract which makes it cost more to NYPA because if you  
11 overstate what you paid then you cost the government more  
12 money. So that's a version of fraud. And he also admitted tax  
13 fraud.

14 THE COURT: He didn't admit tax fraud. He admitted  
15 subscribing to a false return. That's not fraud. That's a  
16 difference between a felony that carries a maximum penalty of  
17 two or three years and a felony that carries a higher maximum  
18 penalty.

19 MR. BANSAL: Judge Seibel said that the combined loss  
20 from the fraud and the tax offense is just shy of \$250,000.

21 THE COURT: Say that one more time.

22 MR. BANSAL: The combined loss from the fraud and tax  
23 offenses is just shy of \$250,000. So that's nearly twice the  
24 loss that was caused --

25 THE COURT: The problem with that is the problems with

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1 the guidelines since they were enacted which is I think this  
2 misbegotten idea that these fine distinctions in loss is a good  
3 way to determine the seriousness of the offense, the  
4 culpability of the defendant. Maybe it is -- well, an example  
5 under 2T1.1, you have how many different categories of loss.  
6 Or 2T4.1 I guess it is. Hold on a second. You have about 15  
7 different categories. I would prefer it if they had three,  
8 zero loss, a lot of loss, or a real lot of loss. And then that  
9 would give you an indication. So if you rip somebody off to  
10 the tune of millions of dollars, that's obviously more serious  
11 than ripping somebody off to the tune of one hundred thousand  
12 dollars. But 132 versus 250 or 240, whatever it is, it's  
13 harder for me to conclude that those are meaningful  
14 differences.

15 In any event, you could say, and I think based on what  
16 you've just told me, that although the offenses were different  
17 in some respects, they're similar in that they involved fraud,  
18 they involved this NYPA and they involved taxes and they  
19 involved losses of more than a hundred, more than even  
20 \$200,000. They're all in the same category. That case and  
21 this case are more similar than they are different. I think  
22 that's a fair argument that you could make. And then you go  
23 onto say from that that he received a nonjail sentence which  
24 you're saying, it doesn't bind me of course, is something I  
25 ought to consider.

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1                   MR. BANSAL: I think so Judge. You're stating it  
2 succinctly and correctly. If I could add something else from  
3 Judge Seibel that could add to your consideration of the  
4 relative seriousness of the offenses, sometimes the loss tables  
5 drive these guideline ranges much more than other factors --

6                   THE COURT: You said it better than I did but I agree  
7 with that.

8                   MR. BANSAL: This is from Judge Seibel. "It's a  
9 pretty appalling crime of greed on the part of somebody who had  
10 plenty of money. Even if this were just a tax crime, I just  
11 find it inexcusable that people who are as lucky as  
12 Mr. Sheridan and who accumulated as much material wealth as he  
13 did would cheat the government. And the tax crime wasn't just  
14 the byproduct of the fraud. It wasn't just well, I can't  
15 report my dirty money or I'll reveal the fraud. It was clean  
16 money that Mr. Sheridan apparently didn't report either. And  
17 it's just that that's just greed, that's just putting yourself  
18 ahead of your community. And as the government points out,  
19 what people are counting on is they're not going to --" I skip  
20 over a little bit, and she says, she regards tax crimes  
21 seriously. She says: "This is worse. Because this is  
22 combined with a fraud as well. And it wasn't an impulsive  
23 thing. It was done over and over again. It required  
24 recruiting other people. It required sordid cash transactions.  
25 If your friends tell you you know, by the way, this isn't

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1 exactly legit, if in that moment you don't have the strength to  
2 say I'm out, you do have the opportunity," and then she says  
3 "Mr. Sheridan didn't do that. He helped Mr. Delaney underpay  
4 his workers, deceive his former employer for whom he worked in  
5 a position of trust and he put cash in his own pocket as a  
6 result. And Mr. Sheridan was a police officer."

7 THE COURT: Can I see the transcript?

8 MS CARNIVAL: I was not there. But the transcript is  
9 accurate.

10 MR. BANSAL: I thought she was.

11 THE COURT: Ms Christodoulou was there, is that right?

12 MS CHRISTODOULOU: Yes, that sounds accurate, although  
13 we don't have the transcript yet.

14 THE COURT: Just give me a moment, please.

15 (Pause)

16 THE COURT: I've read the portion of the sentencing  
17 transcript in U.S. v. Sheridan, 16 Cr. 237 in which Judge  
18 Seibel gives her reason for the sentence that she imposed and  
19 that is probably of more relevance to me than virtually every  
20 other case that either of you or both of you cited. Although  
21 it's not the same as this case it arises out of the same  
22 investigation and there are in my view more similarities than  
23 there are differences. It's not binding on me, of course. But  
24 they both involve fraud and they both involve people, to the  
25 tune of a hundred plus thousand dollars, and they both involve

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1 people who have lived otherwise exemplary lives and so forth.

2 So in that sense they're similar.

3 So I forgot the question that I was going to ask you  
4 before. Do you agree that the guideline range in that other  
5 case was 15 to 21 months and that the loss was what Mr. Bansal  
6 identified earlier?

7 MS CARNIVAL: That is correct, your Honor.

8 THE COURT: All right. Anything else?

9 MR. BANSAL: Judge, I agree that they're comparable in  
10 many ways. In many ways they're comparable in a way that I  
11 think makes this situation, I don't want to say less serious,  
12 but the other situation more serious. One thing I did not see  
13 in the other sentencing was mention of something that I think  
14 that this Court really needs to balance against the goal of  
15 general deterrence. By the way, the goal of general deterrence  
16 is the only thing that the government has cited in favor of a  
17 guideline sentence. Specific deterrence, recidivism, need for  
18 punishment, these are not things that the government thinks are  
19 needed in this case. They're talking about deterrence to the  
20 general public, period. That goal was no less important to the  
21 many other judges that have imposed probationary sentences in  
22 tax cases, no less important in the Sheridan case and perhaps  
23 more important in the Sheridan case because he was a police  
24 officer and somebody who acted in a position of trust and as  
25 Judge Seibel said really should have known better.

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1           One thing I didn't see in that transcript was any need  
2 to balance that goal of general deterrence against the harm  
3 that is going to be done, and I know that sentences do this all  
4 the time. But it is important for the Court in every situation  
5 and this one in particular to balance the goal of general  
6 deterrence against the harm that is going to be done to a young  
7 and innocent family. A five year old girl. The emotional harm  
8 to a five year old girl for losing a father for what could be a  
9 fifth of her life. A 13 year old girl who is going through a  
10 challenging series in her life. An 18 year old boy whose  
11 educational options may be limited because of the father, his  
12 father's incarceration. The loss of a family's livelihood.

13           Here's another thing that with all due respect the  
14 government gets wrong. They say that the question is whether  
15 Mr. Simonlacaj's family can weather the loss of the father's  
16 income during the course of his incarceration. The question is  
17 whether the family can weather the loss of Mr. Simonlacaj's  
18 career. As we spelled out in our sentencing brief, that is  
19 what is very likely to happen.

20           THE COURT: You didn't give me any evidence to support  
21 that. You gave me two letters from people he worked for and  
22 neither of those letters said anything about loss of career.  
23 What they said was that he was irreplaceable. I take that  
24 back. This is Mr. Meir. He says to lose him would be  
25 catastrophic to our company. One could reasonably conclude

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1 from that that if they lost him for a while and then got him  
2 back they'd be delighted because otherwise it could be  
3 catastrophic for their company. I don't see anything in there  
4 that says if he goes to jail we're never going to hire him  
5 back. You say that in your brief but it's not in the letter.  
6 Maybe I missed it.

7 MR. BANSAL: I guess he didn't say that, Judge. It's  
8 something that was told to Mr. Simonlacaj by Mr. Meir. We  
9 obviously don't control what the content of these letters is.  
10 If the Court thinks it's important that Mr. Meir affirm that,  
11 I'm sure we could obtain something to that effect. All I have  
12 right now is the representation that that would occur.

13 THE COURT: What you say is, on page 6 and 7, HFZ has  
14 informed him, meaning Mr. Simonlacaj, that while they have  
15 supported him through his guilty plea and kept him on so his  
16 work could continue uninterrupted, if his work were interrupted  
17 by a prison sentence they would have to terminate him and could  
18 not hire him back.

19 MR. BANSAL: That's correct.

20 THE COURT: You do have two letters from the managing  
21 principal. He doesn't say that. And there's another one,  
22 that's Exhibit 4 in your brief, and there's one other one  
23 somewhere. The general counsel and COO of HFZ, Ms Golub, she  
24 does say very positive things about him but really doesn't say  
25 anything about, Exhibit 14 of your brief, about whether they'd

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1 hire him back. Neither of those things are mentioned. But it  
2 is in your brief. That's your brief. I'm going to impose a  
3 sentence based on what I've been provided. By the way both of  
4 you had plenty of time to do this.

5 Anyway, I didn't mean to interrupt but I did notice  
6 that discrepancy. In other words, the statement in the brief  
7 is not supported by the letters directly; inferentially, but  
8 not directly. Not even inferentially because it says to lose  
9 him would be catastrophic. If that's true, that's a true  
10 statement, then they're not going to want to lose him.

11 MR. BANSAL: If they lose him and then they survive  
12 for a period of time without him maybe they can fill that job.  
13 Look, this is what he was told by his employer. I just wanted  
14 to point out that I think that the government is probably  
15 understating the impact that this is going to have on  
16 Mr. Simonlacaj's family. That is again a factor that I didn't  
17 see Judge Seibel having to balance against Mr. Sheridan's  
18 sentencing and the need for deterrence which was at least as  
19 important.

20 THE COURT: What's this other business that he had?  
21 It says he had another construction business.

22 MR. BANSAL: He's done work through a company called  
23 Center Line.

24 THE COURT: Is he doing work?

25 MR. BANSAL: No, not right now, Judge.

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1           THE COURT: But has in the past?

2           MR. BANSAL: Has in the past.

3           THE COURT: All right.

4           MR. BANSAL: So Judge, for all the reasons that we  
5 cited in our brief, and in particular I think as we've seen  
6 here today, it would be disproportionate to similar sentences  
7 to impose a jail sentence here. I know that the, the Court  
8 knows about the Libous case than I do. But one of the things  
9 that I read in the Libous case is that the defendant came to  
10 court not having even accepted his responsibility for his  
11 offense, that he disputed his accountability for certain of the  
12 charged tax years. Obviously did not plead guilty. Again, his  
13 guideline range was higher and the only distinction that the  
14 government points out is that his loss was lower and as we've  
15 already said, sometimes that's an accident of how the tables  
16 work.

17           THE COURT: Just so you know, his loss was lower but  
18 that was a nonjury trial and I acquitted him of the most  
19 serious charges in that case. And the reason I acquitted him  
20 is because I believe that his defense of good faith reliance on  
21 his accountant, CPA, who was by everybody's agreement a total  
22 idiot but nonetheless managed to be a CPA, had given him tax  
23 advice regarding what to do about personal expenses that have  
24 been paid for by his company, what the impact would be on his  
25 own taxes. It was completely wrong advice. He was a young man

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1 at the time. He wasn't a sophisticated businessman. He was a  
2 young fellow who was a law school graduate, that's true. But I  
3 don't think anyone would call him a lawyer. But he was a law  
4 school graduate.

5 And you see, that's the thing. When you get into  
6 trying to compare one case to another, you really are on a  
7 fool's errand because the cases are just so different. Some of  
8 what happened in the Libous case, because it was a tax case, is  
9 relevant. Some of the things that I said I said. Obviously I  
10 believed them if I said them. But when you get down to the  
11 nitty gritty it's really difficult because you're not taking  
12 into account things like what he was acquitted of and advice  
13 that he received from people who led him astray and his age and  
14 sophistication at the time. Those are other important  
15 factoids.

16 One important factoids is that he didn't plead guilty.  
17 The government wanted me to punish him for going to trial and I  
18 don't do that. That seems unconstitutional to me. But what I  
19 will do is reward someone who pleads guilty. And of course in  
20 your client's case the reward is reflected in the guideline  
21 range. If he hadn't pleaded guilty and had been convicted of  
22 exactly what he pleaded guilty to, his guidelines range would  
23 have been 21 to 27 months. Any way, there you have it. Don't  
24 spend more time on the Libous case. That's enough time on  
25 that. There are just too many differences. Some similarities,

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1 but there's too many differences.

2 MR. BANSAL: Sure, Judge. One of the things that I  
3 think the Court has also to recognize is that here  
4 Mr. Simonlacaj has gone above and beyond accepting his  
5 responsibility in some ways in that he didn't wait for an  
6 assessment, he didn't wait for anyone to send him a tax bill,  
7 he got out ahead, he paid his state taxes, he paid all the  
8 penalties, there could be additional penalties I suppose but he  
9 paid the penalties and interest such as were calculated by his  
10 accountant resulting in payments that were more than twice what  
11 the government calls his tax loss. So I find that  
12 extraordinary.

13 I just turn back to what happened last week in Judge  
14 Seibel's courtroom across the hall. It seems like it would be  
15 unfair, and I realize that every case stands on its own, every  
16 person stands on his own, but every distinction in the Sheridan  
17 case, and this one weighs in favor of treating Mr. Simonlacaj  
18 with greater mitigation than Mr. Sheridan.

19 THE COURT: Ms Carnival, if there's anything you want  
20 to say, you should do that now.

21 MS CARNIVAL: No, your Honor. Just for clarity, based  
22 on what the crime was that was here and why, and what the  
23 defendant said who is about to be sentenced for this crime, the  
24 tax loss and the tax loss that we estimated was his sister's,  
25 not his. I just wanted to make that clear on the record.

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1                 THE COURT: It gets back to where we started from. If  
2 his sister didn't get the money then she didn't owe any taxes  
3 on it. Although the return was false. Anyway, have a seat.

4                 Mr. Simonlacaj, do you have anything you would like to  
5 say or any information you would like to present before I  
6 impose sentence? To be clear, you are not required to do so.  
7 I would not hold it against you or punish you in any way, shape  
8 or form if you chose not to say anything. But this is your  
9 opportunity to say I something if you'd like.

10                THE DEFENDANT: I'd like to apologize to you and to  
11 the government for the crime I committed. I know what I did  
12 was wrong and at the time I knew better. I'm ashamed of what I  
13 did and what I put my family through. This will never happen  
14 again. I look forward to continuing to work hard and raise my  
15 family. Thank you, your Honor.

16                THE COURT: Okay. Thank you very much. Have a seat.  
17                 Let me say first that in deciding the appropriate  
18 sentence in this case I've considered all of the statutory  
19 factors set forth in Title 18 United States Code Section  
20 3553(a). I've also considered all of the materials submitted  
21 in connection with sentencing and all of the arguments and  
22 statements made by both counsel as well as Mr. Simonlacaj  
23 today.

24                 I happen to be someone who does not believe in keeping  
25 a defendant in suspense. I hated that when I was a lawyer. I

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wanted to hear up front what the sentence was and then hear what the reasons are rather than the other way around. So I'm going to tell you up front what the sentence is going to be.

And the sentence that I intend to impose is three months imprisonment to be followed by one year of supervised release as well as a \$25,000 fine. And I believe that that sentence is sufficient but not greater than necessary to comply with the purposes of sentencing set forth in the statute.

My reasoning is as follows. There's no question that the defendant enjoys the strong support of his family and his friends and that he has a long history devotion to his family and community. That is a lot. Most of what is discussed in the defendant's sentencing memorandum and also in the government's response deals with that issue. And I really don't, I don't have to get into the question of whether it's extraordinary or it's just really good or whatever it is. There's no question that he has a long history of devotion to his family and to his community. I don't know how else to put it.

But as I said earlier, the most important sentencing factor is the nature and circumstances of the offense. Particularly so in a white collar context where nearly every defendant, maybe even every defendant but certainly nearly every defendant has a positive work and family history and where incarceration always creates a hardship for the

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1 defendant's family and business activities. And that's the  
2 case certainly in every white collar case. That's why I  
3 believe it's more important to focus on what the defendant did  
4 and less so on who the defendant is. Although that is  
5 certainly relevant. It's just not as relevant as the nature  
6 and circumstances of the offense.

7 I asked a lot of questions about this today and it  
8 essentially confirmed what I believed from what I read. Here  
9 as I understand it the defendant exercised control over a  
10 company owned by his sister called Cortlandt Painting Company.  
11 The defendant was also the beneficiary of Cortlandt's 2010  
12 income from a \$550,000 facade restoration contract that the  
13 company had with the New York Power Authority. And even though  
14 the defendant was the beneficiary of this net income, I'll say,  
15 the income and expenses from that contract were reported on the  
16 defendant's sister's personal income tax return, not on the  
17 defendant's tax return. Because the sister was, at least for  
18 purposes of this transaction, the nominal owner of the company  
19 as distinguished from the beneficial owner, which is really  
20 Mr. Simonlacaj, the defendant provided information regarding  
21 Cortlandt's income and expenses to an accountant that he  
22 retained. The accountant prepared the sister's 2010 tax return  
23 based on that information. And the information that the  
24 defendant provided inflated Cortlandt's expenses by more than  
25 \$400,000 which meant that Cortlandt's profits and thus the

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1 sister's taxable income were substantially underreported. When  
2 I say the sister's taxable income that's because the sister  
3 reported this income. That gets back to what we discussed  
4 earlier, which is who is the real beneficiary here. There's no  
5 question, even though there's some open issue as to exactly  
6 where the money ultimately went, there's no question in my mind  
7 that Mr. Simonlacaj was the ultimate beneficiary. In short,  
8 the defendant was the architect of a scheme that resulted in  
9 the filing of a materially false federal income tax return and  
10 a tax loss to the IRS of about \$132,000.

11 His motivation for doing this can only be one thing,  
12 which is personal financial gain. That's why people cheat on  
13 their taxes or aid and assist other people to cheat on their  
14 taxes or aid and assist the filing of a false tax return in  
15 order to reduce your tax liability. Especially if the tax  
16 liability really belongs to you and not to the person who filed  
17 the return. Especially when you go to this much trouble  
18 through these various entities to commit this offense.

19 What does that tell me? It tells me you're doing it  
20 for personal gain. Who is the loser for that? If this is a  
21 zero sum game, right, somebody gains, somebody loses. Who  
22 loses? Here's who loses. The vast majority of taxpayers who  
23 just go to work every day, get paid every two weeks, pay their  
24 taxes and file accurate income tax returns. That's who loses.  
25 That's who you're stealing from. You think it's okay because

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1 well, there's 300 million people in the country and I'm only  
2 stealing \$132,000. What's that, a few cents per person?  
3 What's the big deal? I think it is a big deal. It undermines  
4 confidence in the system. It feeds the notion that the system  
5 is rigged in favor of the rich, that the rich are the ones who  
6 get away with stuff that the rest of us can't get away with.  
7 How can someone who is a w-2 taxpayer who every two weeks gets  
8 a check and the taxes are taken out there, how could a person  
9 in that position cheat on their taxes. It's not impossible but  
10 it's difficult. People like that, there you go, another rich  
11 guy, loaded, makes plenty of money, doesn't pay his taxes every  
12 two weeks like I do. Then apparently it's not enough to make a  
13 few hundred thousand dollars a year and have assets of several  
14 hundred thousand dollars. That's the guy who wants to steal  
15 from me. That is the message. It's offensive, and appalling  
16 and just not right and there's no excuse for it.

17 This wasn't some innocent mistake that the defendant  
18 made about how the tax laws work. And people can make innocent  
19 mistakes because the tax laws are complicated. But this is not  
20 that case. Rather, this case, what Mr. Simonlacaj did was the  
21 result of deliberate, knowing and willful conduct.

22 Plus the magnitude of the loss was huge. It wasn't  
23 million of dollars, but overstating expenses by more than  
24 \$400,000, that's a lot. That's not 50 dollars or five thousand  
25 dollars. \$400,000 in a single year. And the result of course

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1 is that the magnitude of the loss to the public fisk was  
2 significant, well over \$100,000. So there's no question that  
3 the defendant's willful favor, the magnitude of the lie and the  
4 significance of the loss combined make this a serious crime.

5 The defendant has tried to make this right and that's  
6 to his credit by filing his own amended tax return for 2010 in  
7 which he claimed the correct amount of the income resulting  
8 from the 2010 painting contract or facade restoration contract  
9 which was really his contract, his company, his money. That's  
10 what it is. Cut through the baloney. That's what happened  
11 here. Because it's all those things it makes sense for him to  
12 file an amended return. It was really his return that grossly  
13 understated his income and taxes. Even though the one that was  
14 actually filed was his sister's return. He's the beneficiary,  
15 not his sister, so that's why he filed his return and it makes  
16 perfect sense.

17 The flip side of that is that would make no sense for  
18 the sister to claim the income on her own return. If she did  
19 so she would be filing a materially false tax return because  
20 she didn't receive the income. And as we discussed earlier,  
21 there's no dispute that the defendant has paid to date \$147,850  
22 in additional taxes which is higher than the \$132,000 tax loss  
23 calculated by the government. He's also paid about \$27,000 in  
24 interest and \$40,000 in penalties, which is fine. But the real  
25 number that matters is the 147,000 number which is directly

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1 related to the tax loss. In total he's paid over \$200,000.

2 But the relevant number is the 147,850. That's the number that  
3 exceeds the 132 thousand dollars tax loss calculated by the  
4 government. He's also paid additional state taxes, interest  
5 and penalties. Again this is a federal crime so what I'm  
6 trying for focus on has he made good on his federal tax  
7 obligations, at least with respect to the tax laws.

8 In my view there's no question that the defendant has  
9 made full restitution and for that reason I don't see any  
10 purpose to be served by deferring the entry of a restitution  
11 order for 90 days while the IRS processes an amended return.  
12 The IRS has every right to process the amended return and if  
13 after they process the return the IRS thinks the defendant owes  
14 more in taxes, penalties and interest, then they certainly have  
15 remedies available to them to collect those monies. By the  
16 way, if the IRS thinks the defendant overpaid his taxes,  
17 penalties and interest then I would expect them to refund the  
18 difference. It seems to me it cuts both ways. That's up to  
19 the IRS. They have the right to review the return. If they  
20 think there's even more that's owed, fine, tell Mr. Simonlacaj,  
21 and if he agrees he'll pay it and if he doesn't agree there are  
22 ways for that process to get adjudicated. And I just don't see  
23 any point in delaying the entry of a restitution order when in  
24 my view he's made restitution. Done it. It's already over.

25 That still begs the question of what sentence to

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1 impose in the case. Payment of restitution before entry of  
2 judgment is a good thing and it certainly is a mitigating  
3 factor. The flip side, the defendant is obligated to repay the  
4 money he obtained unlawfully. It's not as if he's doing  
5 something beyond what he's already required to do. He's doing  
6 it earlier perhaps than maybe he would do otherwise. But  
7 basically it's the timeliness of it that's important not the  
8 fact that he did. That's the point I'm trying to make. And he  
9 did do it in a timely fashion. And for that he deserves  
10 credit.

11 Plus, in this case Mr. Simonlacaj is fortunate that he  
12 had the resources to make restitution. Not everybody does.  
13 But he has a net worth of, according to the PSR, around  
14 \$500,000 and yearly income of around \$300,000. That's what's  
15 set forth in the PSR. So the good news is that he did this in  
16 a timely fashion. If he hadn't done it, that would have been  
17 an aggravating factor frankly because he does have these  
18 resources, and if he hadn't made this payment before sentencing  
19 that would have redounded probably more to his detriment. It  
20 would have redounded to his detriment, no question about it,  
21 because he had the ability to make these payments. How do we  
22 know that? Because he did, done.

23 But again, I guess the larger point here is that he  
24 didn't need the money, he's given it back, he took it because  
25 he was greedy. That's what this is about. It's about greed

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1 and about screwing the rest of the populace who pays their  
2 taxes basically every two weeks. That's what this is about.

3 None of the cases cited by either side in their  
4 sentencing submissions is particularly helpful. Every case is  
5 unique, including this one. Both sides site the sentence that  
6 I imposed in the Matthew Libous case. That has a more  
7 persuasive impact on me because it is my case and the words I  
8 used in that case are my words. But that case is very  
9 different, I described some of the differences a moment ago to  
10 Mr. Bansal. So it really, with one exception, has very limited  
11 precedential value. But the exception is kind of important.  
12 Not kind of important, it is important. I said in that case  
13 and I'll say again here that jail sentences in tax cases, even  
14 short jail sentences, do have a general deterrent effect. And  
15 I believe, based on my 35 years of experience or so in the  
16 federal criminal justice system, I believe that the general  
17 deterrent effect of a jail sentence in a tax case is more than  
18 in just about any other type of case. I think it is  
19 particularly relevant in a tax case.

20 Many people are tempted to cheat on taxes. Why?  
21 Because they don't like paying taxes. They earn the money,  
22 they'd like to keep it. And they forget that the roads have to  
23 be built and maintained and the police force has to be paid and  
24 the men and women that are willing to put their lives on the  
25 line for us have to be paid and their efforts to keep us

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safe have to be paid for and financed. Again, people's human nature is about self-interest, that's rule 1 when it comes to human nature. People say I don't care about anybody else, I only care about myself so therefore I'm tempted to cheat on my taxes. If you're a w-2 taxpayer it's hard to do it. But still people are tempted to do it. And the following that if you commit a tax crime, no matter how rich and successful and no matter how much you're loved and no matter how much of an impact it's going to have on your family, your business, your employment, the knowledge that if you commit a tax crime like this and get caught and go to jail even for a short period of time gets people's attention. And it certainly makes people think that tax fraud is just not worth it.

So in my view, a jail sentence here is necessary to satisfy the sentencing factors in Section 3553(a). But under the circumstances, I don't believe the sentence needs to be within the guidelines range, which of course is only advisory, for the following reasons. First of all, this is a nonviolent offense, and other than an offense that Mr. Simonlacaj apparently committed when he was a teenager, 16 or 17 at the time, which would have been about 30 years ago and which is not countable for determining the defendant's criminal history category, the defendant has no prior criminal record. So for my purposes he has no prior criminal record because people who are children who are 16, especially boys who are 16 or 17 often

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1 do incredibly stupid, irresponsible things. And sometimes they  
2 get caught. And what they've done is a criminal offense but  
3 you're 16. I had to cut that person, who has then gone 30  
4 years without doing something like that again, I've got to cut  
5 that person a break. As far as I'm concerned, that's  
6 irrelevant here.

7 Also, and this is important as I said, the defendant  
8 has made full restitution prior to sentencing which is  
9 important because it demonstrates sincere remorse. He had the  
10 ability to make restitution and he did it. And that's  
11 important. He also has, as I mentioned earlier, although this  
12 is not the most important factor, he's demonstrated a history  
13 of service to the community and generosity to others. And the  
14 defendant's family, particularly his parents, will suffer some  
15 hardship during a period of incarceration. But honestly, this  
16 is the least significant mitigating factor because the hardship  
17 that family members will suffer is always a consequence of  
18 committing a serious criminal offense. There's nothing unique  
19 about this case in that regard. As a matter of fact, in every  
20 case in which I've imposed a jail sentence the family of the  
21 defendants have suffered some degree of harm. That's true  
22 whether the defendant is wealthy or successful or poor and  
23 desperate. It doesn't matter. It's the same thing. The  
24 families are impacted by that in an adverse way.

25 If I were to impose a five-year jail sentence, then

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1 obviously the impact would be much greater. If I were to  
2 impose a two-year jail sentence, it's less than five years but  
3 still a lot greater. If I were to impose a twelve-month jail  
4 sentence, the impact on the family would be much greater. So  
5 it is relevant and I'm not imposing a twelve-month sentence,  
6 I'm imposing a three-month sentence, and I'm confident that  
7 this is a family, given their financial wherewithal and given  
8 their cohesiveness, they can withstand that. Although it's not  
9 going to be fun. But that's between the family and  
10 Mr. Simonlacaj. That's on him, it's not on me. Someone to  
11 bear the brunt of disappointment, anger or disapproval,  
12 whatever you want to call it. I would hope that that would be  
13 directed at this defendant, not at the Court. Because I'm just  
14 doing what I believe the law requires and is necessary in the  
15 circumstances.

16 In any event, in combination, the defendant's lack of  
17 criminal record, his payment of full restitution before  
18 sentencing, his history of community service and the effect on  
19 the defendant's favor if he were to be incarcerated, in  
20 combination warrant a downward variance from the sentencing  
21 range to three months. And I will add that I recognize that  
22 that is jail versus no jail when you compare this to the  
23 sentence that was imposed by Judge Seibel who to say the least  
24 is an esteemed colleague of mine. I just feel that in a case  
25 like this there's got to be some jail, it's as simple as that.

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1 So I guess in some sense I respectfully disagree with my  
2 distinguished colleague. Perhaps if she had this case maybe  
3 she would come out a different way. But it's my case and I  
4 have to do what I think is right.

5 I will say, however, that I came into today's  
6 proceeding intending to impose a sentence of six months in jail  
7 and I'm persuaded by what was said today that if I did that,  
8 that would be disproportionate. Even though the cases are not  
9 identical, we're already established that, it would be  
10 disproportionate to an arguably similarly situated defendant  
11 and I don't want to do that. In the words of the statute, that  
12 would be an unwarranted sentencing disparity. But three months  
13 is not an unwarranted sentencing disparity. It's a disparity,  
14 I get it, but it's not unwarranted. That's the point. It's a  
15 warranted disparity. In a case like this a jail sentence, even  
16 a short jail sentence, is necessary and in particular three  
17 months is sufficient but not greater than necessary.

18 Also I do intend to impose a one-year term of  
19 supervised release with a special condition of 100 hours of  
20 community service. And every hour or every day that  
21 Mr. Simonlacaj is performing that community service he will be  
22 reminded of what he did that caused him to be in that  
23 situation. So there's two benefits there. It benefits whoever  
24 he's doing community service for. But I think it will have a  
25 therapeutic effect on his own outlook in life because it's

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1 going to remind him of this over and over and over again. And  
2 he should be reminded of it. I'm also going to impose a fine  
3 in the amount of \$25,000 which I think is appropriate under the  
4 circumstances.

5 When you combine all of that together the bottom line  
6 is that given the nature and circumstances of the offense,  
7 history and characteristics of the defendant, the sentence I  
8 intend to impose is sufficient but not greater than necessary  
9 to reflect the seriousness of the offense, promote respect for  
10 the law, and provide just punishment for the sentence; also, to  
11 afford adequate deterrence to criminal conduct, that's the  
12 single most important sentencing factor here, and to avoid  
13 unwarranted sentencing disparity among similarly situated  
14 defendants.

15 Does either counsel know of any legal reason why the  
16 sentence should not be imposed as stated?

17 MS CARNIVAL: Your Honor, just the mandatory special  
18 assessment.

19 THE COURT: I'll get to that.

20 MS CARNIVAL: No, your Honor.

21 THE COURT: Other than that, you don't have a legal  
22 reason why I shouldn't impose the sentence which is the --

23 MS CARNIVAL: No, your Honor. The sentence is, we  
24 have no objection, no reason to believe --

25 THE COURT: The question is do you know of any legal

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1 reason why the sentence should not be imposed as stated.

2 MS CARNIVAL: No, your Honor.

3 THE COURT: Mr. Bansal, do you know of any legal  
4 reason why the sentence should not be imposed as stated?

5 MR. BANSAL: No, Judge, but I'm afraid I won't have  
6 the opportunity to mention it later and I think I'd be remiss  
7 if I didn't point out that home detention would be a legal  
8 sentence as well.

9 THE COURT: It would. I'm fully aware that home  
10 detention and even a nonincarceratory sentence would be legal,  
11 permissible and maybe even reasonable. But that doesn't mean  
12 that this sentence is not reasonable or appropriate.

13 For all the reasons I explained in detail on the  
14 record, I believe that this is the sentence which is sufficient  
15 but not greater than necessary to satisfy the sentencing  
16 objectives in the statute. The answer is no, you don't know of  
17 a legal reason.

18 MR. BANSAL: No, your Honor.

19 THE COURT: Mr. Simonlacaj, please stand. It is the  
20 judgment of this Court that you be committed to the custody of  
21 the United States Bureau of Prisons for a total term of three  
22 months to be followed by one year of supervised release. The  
23 standard conditions of supervised release 1-13 should apply.  
24 The following mandatory conditions shall also apply, they're on  
25 page 18 of the presentence report. You have to bear with me,

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I'm required to read them into the record. The defendant shall not commit another federal, state or local crime. The defendant shall not illegally possess a controlled substance. The defendant shall not possess a firearm or destructive device. The mandatory drug-testing condition is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

In addition, the following special conditions shall apply. 1. The defendant shall perform 100 hours of community service as directed by the probation officer. 2. The defendant is to report to the nearest Probation Office within 72 hours of release from custody. And 3. The defendant is to be supervised by his district of residence. I'm not imposing restitution because as far as I'm concerned he's already made restitution based on all the discussions we had earlier. Therefore, there's no need to impose any special conditions regarding access to financial information and so forth. I am imposing a fine in the amount of \$25,000 to be paid in full not later than six months after entry of judgment. That gives you plenty of time. If I were you I'd pay it tomorrow, maybe not tomorrow, tomorrow is Saturday, I'd pay it as soon as possible. But under the circumstances I'll give you six months to pay it from the date of judgment. As I said earlier, restitution is not applicable here. I am imposing the mandatory special assessment of one hundred dollars which is due immediately.

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1                 The foregoing constitutes the sentence of the Court.

2                 You may have a seat, sir.

3                 You have the right to appeal your sentence subject to  
4 any limitations on that right contained in your plea agreement  
5 with the government. If you're unable to pay the costs of  
6 appeal you may apply for leave to appeal without payment of  
7 costs. The notice of appeal must be filed within 14 days after  
8 the entry of judgment. If you do wish to appeal, you must  
9 inform your attorney to prepare and file a notice of appeal  
10 immediately; or if you request, the clerk will prepare and file  
11 a notice of appeal in your behalf. Mr. Bansal, I would ask you  
12 to have that conversation with your client today about his  
13 appellate rights. Maybe you've already had it but if you  
14 haven't you should have it today because the worst thing that  
15 could possibly happen is that the defendant wants to appeal,  
16 I'm not saying he does, but if he does he's got to move quickly  
17 on it, so please have that conversation today. There are no  
18 open counts.

19                 Recommendation to the Bureau of Prisons? By the  
20 way, I'm willing to give your client a surrender date if you  
21 ask me for that. Why don't we deal with that first. Are you  
22 asking for that, meaning that he would direct surrender to the  
23 institution designated?

24                 MR. BANSAL: Yes, your Honor. And the government has  
25 agreed to that as well.

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1                   THE COURT: Whether they do or they don't I would do  
2 it. He's not going anywhere obviously. The typical time frame  
3 for that is 45 days. That comes out to October 31, 2016. If  
4 there's some reason why it should be less or more than that,  
5 tell me now. But that's usually enough. The sooner you get  
6 started the sooner you finish. I think 45 days is plenty.  
7 Frankly, if it were me I'd go in today but I can understand why  
8 somebody would want to get things in order.

9                   MR. BANSAL: Let me have a moment, your Honor.

10                  (Pause)

11                  MR. BANSAL: We'd ask for 14 days.

12                  THE COURT: He can't be designated in 14 days. That's  
13 just not enough time for the BOP. If it is 14 days he would  
14 have to surrender here to the marshals which is fine too. It  
15 just can't be done in 14 days.

16                  MR. BANSAL: If in the Court's experience 45 days is  
17 the minimum that is required...

18                  THE COURT: There's a process involved. But he's  
19 welcome to surrender in 14 days. It's just that it would have  
20 to be here, Mr. Bansal, in the marshal's office.

21                  MR. BANSAL: If you're okay, we'd go with the 45 days,  
22 we'll go with that.

23                  THE COURT: All right. November 1 at two p.m. The  
24 institution to be designated, as you know, Mr. Bansal, both you  
25 and your client will be informed. But if you get close to that

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1 date and you haven't heard anything you need to call the  
2 probation officer, Mr. Quinn, and take it from there.

3 Recommendations. Bail will be continued until then. So all  
4 the conditions upon which you've been released up until now  
5 continue to apply until the date of surrender.

6 Recommendations to the BOP. In similar cases,  
7 relatively short sentences, I've been asked and I've agreed to  
8 recommend that the defendant be incarcerated at the MDC which  
9 is in Brooklyn. It's a large facility. They do have the  
10 ability to house people for a relatively short time. Of course  
11 any recommendation I make is not binding on the BOP. They'll  
12 put him wherever they want to put him. If you want me to  
13 recommend MDC or something else, that's fine. I'll recommend  
14 it.

15 MR. BANSAL: Judge, would you entertain a letter  
16 seeking a recommendation. I must tell you, I was not expecting  
17 this to happen. Perhaps Otisville might be better. His family  
18 is in Westchester. MDC is a jail as well as a prison.

19 THE COURT: Otisville is a jail too. You can't go  
20 home at night.

21 MR. BANSAL: I've seen a holding facility for pretrial  
22 inmates. I might just do a little work on that.

23 THE COURT: I'll hold up the judgment. I can't file  
24 the judgment until you give me such a request. I'm not  
25 unwilling to do it but I would think that you would have

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1 thought about it. The guideline range is 12 to 18 months.  
2 It's not as if the guideline range is zero. Would it be  
3 satisfactory, I could say FCI Otisville. I have no problem  
4 doing that. I'm not trying to be difficult. I'm just trying  
5 to make it as easy as possible.

6 MR. BANSAL: I don't want to make a mistake. I do  
7 apologize for not having done this.

8 THE COURT: If you get back to me by Tuesday of next  
9 weeks with a letter, which is plenty of time, it doesn't take  
10 long, the BOP website is very detailed. It used to be before  
11 the Internet age that there were books written that would tell  
12 you about different places. You don't really need to do that.  
13 It's out there online and therefore it's information that's  
14 easily obtained. By Tuesday, which is the 20th, you're going  
15 to write me on letter making whatever specific recommendations  
16 to me that you think I should recommend to the BOP. And as  
17 long as it's reasonable I'll do it. I don't have any problem  
18 with that.

19 MR. BANSAL: Thank you.

20 THE COURT: If you ask for something that's  
21 unreasonable, I'm not sure what would be unreasonable, but keep  
22 that in mind. I will recommend a specific place. I will  
23 recommend as close as possible to the New York area. I'll do  
24 any of those things. So just let me know what you want.

25 MR. BANSAL: Thank you, Judge.

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1                   THE COURT: Anything else that we' need to do today?

2                   By the way, just so we're clear on the record, the IRS  
3 is not bound in any way, shape or form by anything that I did  
4 today. In other words, if they think that Mr. Simonlacaj owes  
5 more taxes, penalties or interest they have the right to seek  
6 such taxes, penalties or interest. So nothing that I've done  
7 today limits the IRS in any way, shape or form. But for  
8 purposes of restitution in this criminal case, restitution has  
9 been made and therefore there doesn't need to be any specific  
10 restitution order. Anything further Ms Carnival?

11                  MS CARNIVAL: No, your Honor.

12                  THE COURT: Mr. Bansal.

13                  MR. BANSAL: No, thank you, your Honor.

14                  THE COURT: Thank you all very much. Good luck to you  
15 Mr. Simonlacaj.

16                  THE COURTROOM DEPUTY: All rise.

17                  This Court will be in recess.

18                  (Record closed; 11:40 a.m.)

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